

REMARKS

Claims 11-24 are again rejected under 35 U.S.C § 103 on entirely new grounds under Section 103. Claims 11 - 15, 19 - 21 and 24 are now rejected over Banik (U.S. Pub. 2005/0197536) in view of Malackowski (U.S. Pub. 2004/0267297) in further view of Pronk (U.S. 6,907,104) and in further view of Whipple (U.S. Pub. 2003/0230630. Claims 16, 17, 22 and 23 are rejected over Banik in view of Malackowski and further in view of both Pronk and Whipple and still further in view of Binkert (U.S. Pub 2003/0197734). Claim 18 is rejected as obvious over Banik in view of Malackowski and further in view of both Pronk and Whipple and still further in view of Anderson (U.S. 6,394,952).

Applicant traverses these rejections for the following noted reasons and requests reconsideration in view of expressly claimed features which fully distinguish the independent claims 11 and 20 over the cited art.

The rejection as applied to independent claims 11 and 20 cites the Banik reference for disclosure of conventional controls used to operate an endoscopy system as described in paragraph [0084] thereof. However, it is noted that while claim 11 only recites two elements, the rejection does not and cannot cite the Banik reference for disclosure of either element. Claim 11 requires (i) an x-ray imaging unit and (ii) a control unit which controls the taking of the x-ray image, neither of which are in the Banik reference. Thus there is no apparent reason that the Banik reference should be chosen as a primary reference in posing a rejection under Section 103.

Further, at page 3 of the office communication it is stated that

“As explained herein, the implants would have been scanned with an identification code and the imaging subsystem would adjust the intensity of the imager based on the type of implants or agents inserted”

but no such explanation is provided by the Examiner and no citation is made in the Banik reference to support such a conclusion about the prior art. Also, with regard to claim 11, the rejection cites the Pronk reference for disclosure of “reading a chip card within which information is stored” (at col. 1, lines 18-30) but this is not the same as what is claimed. Claim 11 requires setting “operating parameters ... according to the identification code to control contrast between the adjuvant and an adjacent region of the object ...

In this regard the rejection allegedly finds support in the Whipple reference, but the Whipple reference does not at all compensate for the deficiencies already noted. It must be noted

that the rejection does not cite any specific text of the Whipple reference except to state that the abstract discloses "a code has instructions to control image contrast" which can be used to control contrast between the adjuvant and surrounding regions. However, it is not understood how the rejection can conclude that the Abstract discloses such use of code instructions; and there does not appear to be disclosure in the Abstract of controlling image contrast.

Neither of the two elements recited in claim 11 are found in the cited combination and the rejection certainly fails to provide support for finding these features in the references. With an inability to read every feature of claim 11 on the prior art there cannot even be a piecemeal reconstruction of the claimed invention. For similar reasons the rejection of independent claim 20 is in error for very similar reasons.

In summary, there cannot be a prima facie case of obviousness to reject claim 11 and, for similar reasons, the rejection of claim 20 is also in error. Also, argument regarding distinguishing features of the dependent claims is of record. Further, in view of deficiencies noted in the rejection of independent claims 11 and 20, all of the dependent claims should be allowed.

Conclusion

For the foregoing reasons, Applicant respectfully requests that the Examiner withdraw all of the final rejections and timely pass the application to allowance. All correspondence should continue to be directed to our below-listed address. Please grant any extensions of time required to enter this paper. The Commissioner is hereby authorized to charge any appropriate fees due in connection with this paper or credit any overpayments to Deposit Account No. 19-2179.

Respectfully submitted,

Dated: 07/20/2011

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